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Health Courts May Offer Medical Liability Relief



By Jack Stone, R-134, Fairfield, Trumbull

Once again, the Connecticut legislature adjourned without adopting comprehensive reform of the medical liability system. This is a disappointing outcome on an important issue affecting patients and doctors that has generated intense debate for more than four years.

Some fresh new ideas, however, offer promise. One with great potential involves special health courts.

A health court, like those used in Europe and in limited cases in Florida and Virginia, employs judges with special medical training, and uses court-appointed independent medical experts. In clear cut cases, an initial review board provides prompt compensation for medical injuries.

Decisions decided by a health court are made according to consistent legal standards of care. Financial awards follow an established payment schedule for a particular injury. Health court system data is used to improve the root causes of patient injury.

Right now, patients who suffer an adverse effect of a medical treatment have only one avenue for relief: take the doctor and hospital to court and try to show someone was at fault. The current system is slow, the outcome is unpredictable and it involves high administrative costs. Few injured patients ever file a claim, fewer have a day in court, and even fewer are compensated – be it from a settlement or jury award.

The current system can be much like a roll of the dice. One patient may win millions, while others go away empty handed. We need to make the process fairer, faster and more predictable.

In 2005, the Connecticut legislature made some modifications to the system, though proposals to include limits on non-economic damages claims to hold down doctors' insurance premiums have not passed. Many experts believe the 2005 legislation did not go far enough to address the problem and it is only a matter of time before medical liability insurance premiums start rising again. Unfortunately, no other legislative alternative made its way through the House and Senate this year.

Supported by many doctors, guidelines on medical liability awards would address one aspect of the problem: unpredictable, multi-million-dollar awards. Pre-determined limits on non-economic damages, however, have not been accepted by majority Democrats who control the legislature, trial lawyers or advocates for victims' rights.

A new approach such as implementing special health courts is urgently needed, one that goes deeper into the problem.

Connecticut data shows doctors in lawsuit-prone specialties including obstetrics and neurosurgery pay insurance premiums of up to \$180,000 a year. Doctors and hospitals practice defensive medicine, ordering batteries of expensive tests that may not be medically necessary. Only a small percentage of injured patients pursue litigation and even fewer receive any compensation. But some patients file suit even when doctors did nothing wrong, and claims are unfounded or frivolous. Further, the system does nothing to identify medical errors and improve patient safety.

Common Good, a bi-partisan organization dedicated to restoring common sense to the American legal system and the Harvard School of Public Health have together drafted model special health court legislation to benefit both patients and doctors.

The Fairfield County Medical Association, the Business Council of Fairfield County, Stamford Hospital and dozens of other groups have endorsed special health courts. Bipartisan support of the concept also comes from the U.S. Democratic Leadership Council and the U.S. Senate Republican Policy Committee. Think tank organizations on both the left and right, such as the Manhattan Institute and Progressive Policy Institute, have praised the idea.

There will be start-up costs associated with any reform of the system. To ease the load on already burdened taxpayers, we could spread such costs over several years. Some states are considering demonstration projects to see how well the special health court performs. Connecticut should be among them.

We could begin by selecting new judges, within the existing court system, who have specialized experience and training in medical matters. Many professions today have developed specialties and judges should be no exception. Medical cases are highly complex matters, and it would be wise for courts to encourage judicial specialization in those complex medical issues. I believe such a system would help assure that medical injury cases are decided fairly, on the basis of scientific facts, not emotion, as is so often the case in jury proceedings.

The idea is not new - special courts exist in other areas of law such as tax, workers' compensation and others.

The only thing we cannot afford is to maintain the status quo. It is time to test new alternatives to the medical liability system.

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